VERMONT SUPREME COURT
109 State Street
Montpelier VT 05609-0801
802-828-4774
www.vermontjudiciary.org

Case No. 22-AP-067

Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

v. Thomas Mozzer } APPEALED FROM:
} Superior Court, Bennington Unit,
} Civil Division
} CASE NO. 22-ST-00127
Trial Judge: John W. Valente

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals the dismissal of his complaint for an order against stalking. We affirm.

, plaintiff filed a complaint for an order against stalking against defendant Thomas Mozzer of the Vermont State Police. He alleged that he was falsely convicted of impersonating a police officer and disorderly conduct in 2013 and 2014 and that the police sat outside his home and eavesdropped on him, and refused to help when he was being harassed by neighbors. Plaintiff alleged further that when he moved to Florida defendant harassed him by asking Florida law enforcement to monitor him. Plaintiff also asserted that defendant was a liar.

The court denied plaintiff's request for an emergency no-stalking order. The court concluded that it could not enter an anti-stalking order against the Vermont State Police because the entity is not a person. See 12 V.S.A. § 5131(1)(A) (defining course of conduct as list of actions made by "a person"). The court further concluded that plaintiff's allegations against defendant, mainly that defendant was a liar, did not qualify as stalking. The court further held that in any event defendant's acts were performed in his capacity as a Vermont State Trooper and therefore qualified immunity applied. Plaintiff indicated that he wanted to pursue a final order and requested a hearing. On , after a hearing, the court issued on order denying plaintiff's request for a no-stalking order based on findings made orally on the record. See Id. § 5133(i) (allowing findings to be made in writing or orally on record). Plaintiff appealed.

An order against stalking must be supported by a preponderance of the evidence showing that the defendant has stalked the plaintiff. Id. § 5133(d). Stalking means to engage in a course of conduct directed at a specific person that that the stalker knows or should know would cause reasonable persons to fear for their safety or cause substantial emotional distress. Id. § 5131(6). " 'Course of conduct' means two or more acts over a period of time, however short, in which a person follows, monitors, surveils, threatens, or makes threats about another person, or interferes with another person's property." Id. § 5131(1)(A).

On appeal, plaintiff argues that defendant directed Florida law enforcement to go to his house and monitor him and that qualified immunity does not apply because defendant abused his law enforcement powers by contacting Florida law enforcement. "Because the [trial court] is in a unique position to assess the credibility of witnesses and weigh the strength of evidence at hearing, we review the [trial court's] decision to grant or deny a protective order only for an abuse of discretion, upholding its findings if supported by the evidence and its conclusions if supported by the findings." Scheffler v. Harrington, 2020 VT 93, ¶ 8, 213 Vt. 364 (quotation omitted).

We are unable to consider plaintiff's arguments that the evidence supported granting an order and that the facts demonstrated that qualified immunity did not apply because plaintiff has not ordered a copy of the transcript. Plaintiff, who is the appellant, is responsible for obtaining a transcript and waives any issue for which a transcript is necessary. V.R.A.P. 10(b)(1). Without a transcript, we have no record of what evidence and arguments were presented to the trial court at the hearing or the trial court's findings and therefore cannot review the evidence to see if it supports the findings. In re Joyce, 2018 VT 90, ¶ 21, 208 Vt. 226 (explaining that appellate review of issues related to sufficiency of evidence cannot be reviewed without transcript). Therefore, we must assume that the evidence supports the court's conclusion.

Affirmed.

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

Nancy J. Waples, Associate Justice